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6 Attorneys for United States of America

7 UNITED STATES DISTRICT COURT

8 SOUTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA

10 v.

11 HOOTAN MELAMED (1),
12 JEAN FRANCOIS PICARD (2),
13 JOHN PANGELINAN (3),
14 PHONG HUNG TRAN (4),
JONATHAN PENA (5),

15 Defendants.

16 } No. 16CR1409-H
} JOINT MOTION TO (1) CONTINUE
} MOTION HEARING AND (2)
} EXCLUDE TIME UNDER THE
} SPEEDY TRIAL ACT

17 } Date: May 22, 2017
} Time: 2:00 p.m.

18 The captioned parties jointly move to continue the motion hearing currently set for
19 May 22, 2017 at 2:00 p.m. to August 28, 2017 at 2:00 p.m., and to exclude time under the
20 Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(7). In support, the parties submit as
follows:

21 1. On June 16, 2016, a federal grand jury returned a 14-count indictment
22 charging the defendants with conspiracy, honest services mail fraud, violations of the
23 Travel Act, and criminal forfeiture, in connection with an alleged \$34 million kickback and
24 bribery scheme through which service providers paid bribes and kickbacks to doctors to
25 write prescriptions for compound creams or make referrals for durable medical equipment,
26 and then to submit them to specific pharmacies and companies to be filled.

1 2. The defendants made their initial appearances and were arraigned on the
 2 indictment in the Southern District of California on June 28, 2016. The Speedy Trial Act,
 3 18 U.S.C. § 3161(c)(1), requires trial to commence within 70 days from that date. Section
 4 3161(h) excludes certain periods of time in calculating the 70 days, including delay
 5 resulting from a continuance if the court finds “the ends of justice served by taking such
 6 action outweigh the best interest of the public and the defendant in a speedy trial.” 18
 7 U.S.C. § 3161(h)(7)(A). The court must “set[] forth . . . either orally or in writing, its
 8 reasons” for the finding. Id. The court “shall consider” the following factors, “among
 9 others”:

10 (i) Whether the failure to grant such a continuance in the proceeding
 11 would be likely to make a continuation of such proceeding impossible, or
 12 result in a miscarriage of justice.

13 (ii) Whether the case is so unusual or so complex, due to the number of
 14 defendants, the nature of the prosecution, or the existence of novel
 15 questions of fact or law, that it is unreasonable to expect adequate
 16 preparation for pretrial proceedings or for the trial itself within the time
 17 limits established by this section.

18 ...

19 (iv) Whether the failure to grant such a continuance in a case which, taken
 20 as a whole, is not so unusual or so complex as to fall within clause (ii),
 21 would deny the defendant reasonable time to obtain counsel, would
 22 unreasonably deny the defendant or the Government continuity of counsel,
 23 or would deny counsel for the defendant or the attorney for the Government
 24 the reasonable time necessary for effective preparation, taking into account
 25 the existence of due diligence.

26 U.S.C. § 3161(h)(7)(B). “No continuance under [this provision] shall be granted because
 27 of general congestion of the court’s calendar, or lack of diligent preparation or failure to
 28 obtain available witnesses on the part of the attorney for the Government.” U.S.C. §
 3161(h)(7)(C).

29 3. The parties agree that the ends of justice served by granting the requested
 30 continuance outweigh the best interest of the public and the defendants in a speedy trial,
 31 for the following reasons:

a. According to the indictment, the alleged scheme involved years' worth of medical treatments, millions of dollars in bills, thousands of dollars in corrupt payments, and hundreds of patients.

b. Because the claims involve patient identities, medical treatment, and billing records, the discovery in this case is sensitive. The Court issued a protective order on July 18, 2016.

c. The discovery consists of thousands of pages of bank records, agent reports, and subpoenaed documents, as well as hundreds of audio recordings ranging in duration from a few minutes to over an hour.

d. Given the volume of discovery and the need to protect and limit its disclosure, the defense needs time to review the material before they can file and litigate pretrial motions and provide an estimate of trial length.

e. To assist the parties in evaluating the discovery, the United States has offered to meet with defense counsel. Those meetings are being scheduled and have not yet occurred.

4. Accordingly, the parties request a continuance of the motion hearing until August 28, 2017.

5. The parties have exercised due diligence. The parties submit that the amount of discovery and the nature of the charges make it unreasonable to expect adequate preparation for pretrial proceedings or the trial itself within the time limits established by the Speedy Trial Act. The parties further submit that the failure to grant the requested continuance would deny counsel the reasonable time necessary for effective preparation and result in a miscarriage of justice.

6. Defendants are all currently out of custody.

7. Counsel for defendants represent that they have discussed the need for this continuance with their respective clients, and that each defendant agrees to and joins in the request for this continuance.

8. The parties therefore jointly move for a continuance and to exclude time under the Speedy Trial Act. The parties agree the period of delay excluded spans from the filing of this joint motion until the new date for the hearing pursuant to U.S.C. § 3161(h)(1)(D) and (h)(7)(A); specifically, that the time between May 22, 2017 and August 28, 2017 shall be excluded.

SO STIPULATED AND AGREED.

DATED: May 15, 2017

ALANA ROBINSON
Acting United States Attorney

s/ Valerie H. Chu
VALERIE H. CHU
Assistant United States Attorney

s/Steven Goldsobel (w/authorization)
STEVEN GOLDSOBEL
Counsel for Hootan Melamed (Def 1)

s/Patrick Q. Hall (w/authorization)
PATRICK Q. HALL
Counsel for John Pangelinan (Def 3)

s/Thomas Warwick (w/authorization)
THOMAS WARWICK
Counsel for Phong Tran (Def 4)

s/Gretchen von Helms (w/authorization)
GRETCHEN VON HELMS
Counsel for Jonathan Pena (Def 5)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA) No. 16cr1409-H
Plaintiff,) CERTIFICATE OF SERVICE
v.)
HOOTAN MELAMED (1),)
JEAN FRANCOIS PICARD (2),)
JOHN PANGELINAN (3),)
PHONG HUNG TRAN (4),)
JONATHAN PENA (5),)
Defendants.)

IT IS HEREBY CERTIFIED THAT:

I, Valerie H Chu, am a citizen of the United States and am at least 18 years of age.
My business address is 880 Front Street, San Diego, California 92101-8893.

I am not a party to this case. I have caused service of the attached Joint Motion on
the parties to this case by filing the foregoing with the Clerk of the District Court using its
ECF system, which electronically notifies them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2017

s/ Valerie H. Chu
VALERIE H. CHU